

AMENDED IN ASSEMBLY JUNE 9, 2004

AMENDED IN SENATE MAY 3, 2004

AMENDED IN SENATE APRIL 22, 2004

AMENDED IN SENATE APRIL 1, 2004

AMENDED IN SENATE MARCH 30, 2004

SENATE BILL**No. 1569**

Introduced by Senator Dunn

February 19, 2004

An act to add Section 1393.3 to the Health and Safety Code, relating to health care service plans.

LEGISLATIVE COUNSEL'S DIGEST

SB 1569, as amended, Dunn. ~~Aggrieved providers:~~ *Provider remedies.*

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care. The act requires that a contract between a plan and a provider contain provisions requiring a fast, fair, and cost-effective dispute resolution mechanism and that reimbursement of a complete claim, which is neither contested nor denied, be made within a designated time period.

This bill would authorize ~~an aggrieved~~ a provider, as defined, to bring an action, subject to specified conditions, against a health care service plan that violates a provision of the act *or its implementing regulations* relating to claims processing or payment, *as defined. The bill would also authorize a provider to bring an action against a plan,*

subject to specified conditions, that negligently delegates its payment responsibility to a contracting entity that becomes insolvent.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) *The Legislature finds and declares the*
2 *following:*

3 (1) *Billing by providers and claims processing by health care*
4 *service plans are essential components of the health care delivery*
5 *process.*

6 (2) *While providers have traditionally utilized the courts as a*
7 *mechanism to seek payment relief, courts in Ochs v. PacifiCare of*
8 *California (2004) 115 Cal.App.4th 782; In re Managed Care*
9 *Litigation (2003) 298 F.Supp.2d 1259, and Chase Dennis*
10 *Emergency Group, Inc. v. Aetna (2003) Cal.App. Unpub. LEXIS*
11 *9235, which is not an officially published case, have concluded*
12 *that the payment provisions of the Knox-Keene Health Care*
13 *Service Plan Act of 1975 (Chapter 2.2 (commencing with Section*
14 *1340) of Division 2 of the Health and Safety Code (hereafter the*
15 *Knox-Keene Act)) are not directly enforceable by providers*
16 *because the payment of providers is a regulatory responsibility of*
17 *the Department of Managed Health Care.*

18 (3) *At the same time, the Department of Managed Health Care*
19 *has interpreted the Knox-Keene Act to authorize it to impose fines*
20 *on plans that on a systemic basis, fail to comply with the*
21 *Knox-Keene Act payment and claims processing provisions, but*
22 *that it is without authority to compel plans to pay an individual*
23 *provider.*

24 (4) *If providers are unable to obtain relief from either the*
25 *Department of Managed Health Care or the courts, they may be*
26 *without a remedy for nonpayment of their claims and other*
27 *violations of the Knox-Keene Act.*

28 (b) *It is, therefore, the intent of the Legislature to clarify that*
29 *providers may maintain suits, as set forth in this act, to redress*
30 *payment violations under the Knox-Keene Act. To avoid any*
31 *misinterpretation, this act applies only to the payment and claims*
32 *processing provisions it specifically identifies and to the instances*



1 *where a plan's contracting entity becomes insolvent as specifically*
2 *identified in this act.*

3 SEC. 2. Section 1393.3 is added to the Health and Safety
4 Code, to read:

5 1393.3. (a) If a health care service plan violates ~~any a~~
6 ~~provision of this chapter or its implementing regulations~~ relating
7 ~~to claims processing or payment, an aggrieved provider a provider~~
8 ~~that contracts directly with the plan~~ may bring an action against
9 that plan to recover ~~contract damages and statutory interest and~~
10 ~~penalties and, if contract damages plus penalties and interest in~~
11 ~~accordance with this chapter and, if appropriate, to obtain~~
12 ~~injunctive relief. If a court determines that the health care service~~
13 ~~plan acted without reasonable justification, the court, in its~~
14 ~~discretion, may award the aggrieved provider costs or reasonable~~
15 ~~attorney's fees, or both. The remedies under this section shall be~~
16 ~~in addition to, and not in derogation of, all other rights and~~
17 ~~remedies that an aggrieved provider may have under any other law.~~

18 (b) ~~For the purposes of this section, an "aggrieved provider"~~
19 ~~means a physician and surgeon licensed pursuant to Chapter 5~~
20 ~~(commencing with Section 2000) of Division 2 of the Business and~~
21 ~~Professions Code or an osteopathic physician and surgeon licensed~~
22 ~~pursuant to the Osteopathic Initiative Act or a lawfully organized~~
23 ~~group of those physicians and surgeons or osteopathic physicians~~
24 ~~and surgeons who meets one of the following conditions:~~

25 (1) ~~Contracts directly with the plan alleged to be in violation of~~
26 ~~this chapter.~~

27 (2) ~~Contracts directly with an entity that contracts directly with~~
28 ~~the plan, the aggrieved provider has provided services to the plan's~~
29 ~~enrollees on or after January 1, 2005, and the entity has become~~
30 ~~insolvent.~~

31 (3) ~~Has provided emergency medical services covered under an~~
32 ~~enrollee's plan contract to the enrollee of a plan alleged to be in~~
33 ~~violation of this chapter and has exhausted all administrative~~
34 ~~remedies required under this chapter.~~

35 (c)

36 (b) *Notwithstanding any delegation of duties under this*
37 *chapter, if a health care service plan has been negligent in its*
38 *delegation of payment responsibilities to a contracting entity, a*
39 *provider that contracts directly with the contracting entity may*
40 *bring an action against the plan to recover quasi-contract*

1 damages, plus penalties and interest in accordance with this
2 chapter; and, if appropriate, injunctive relief, if all of the following
3 conditions exist:

4 (1) The contracting entity has become insolvent.

5 (2) The provider has provided services to the plan's enrollees on
6 or after January 1, 2005.

7 (3) The provider has not been paid by the plan's contracting
8 entity.

9 (c) If a health care service plan violates a provision of this
10 chapter or its implementing regulations relating to claims
11 processing or payment for a claim submitted directly to the plan,
12 a provider may bring an action against the plan to recover
13 quasi-contract damages, plus penalties and interest in accordance
14 with this chapter; and, if appropriate, injunctive relief, if both of the
15 following conditions exist:

16 (1) The provider has no written contract with the plan or its
17 contracting entity.

18 (2) The provider has provided to the enrollee emergency
19 medical services and care as set forth in Section 1371.4 that are
20 covered under the enrollee's plan contract.

21 (d) If a health care service plan has delegated payment
22 responsibilities to a contracting entity that becomes insolvent, a
23 provider who has no written contract with the plan or its
24 contracting entity and who has provided to the enrollee emergency
25 medical services and care or necessary medical care as set forth
26 in Section 1371.4 on or after January 1, 2005, but has not been
27 paid for those services by the contracting entity, may bring an
28 action against the plan to recover quasi-contract damages plus
29 interest and penalties, and if appropriate, injunctive relief.

30 (e) If the aggrieved provider is a shareholder, employee,
31 partner, or contractor of a lawfully organized group practice and
32 does not contract directly with the health care service plan or the
33 entity that directly contracts with the health care service plan, the
34 action may be filed only by the group practice and not by its
35 shareholders, employees, partners, or contractors.

36 ~~(d) An aggrieved~~

37 (f) A provider may not maintain a cause of action pursuant to
38 this section if the claim in dispute concerns a service that is
39 excluded as a covered benefit from the terms and conditions of the
40 health care service plan contract or is a disputed health care service

1 for which independent medical review has been requested but not
2 yet completed pursuant to Article 5.55 (commencing with Section
3 1374.30).

4 ~~(e)~~

5 (g) *For purposes of this section, the following definitions*
6 *apply:*

7 (1) *“A provision of this chapter or its implementing regulations*
8 *relating to claims processing or payment” means Section 1371,*
9 *1371.1, 1371.2, 1371.22, 1371.35, 1371.36, 1371.37, 1371.4, or*
10 *1371.8 of this code or Section 1300.71, 1300.71.38, or 1300.71.4*
11 *of Title 28 of the California Code of Regulations.*

12 (2) *“Insolvent” means having stopped paying all claims in the*
13 *ordinary course of business.*

14 (3) *“Provider” means a physician and surgeon licensed*
15 *pursuant to Chapter 5 (commencing with Section 2000) of*
16 *Division 2 of the Business and Professions Code, an osteopathic*
17 *physician and surgeon licensed pursuant to the Osteopathic Act,*
18 *or a lawfully organized group of those physicians and surgeons or*
19 *osteopathic physicians and surgeons.*

20 (4) *“Quasi-contract damages” means the reasonable value of*
21 *the services rendered by the provider.*

22 (h) Nothing in this section shall be construed to negate a
23 contractual requirement between a plan and ~~an aggrieved~~ a
24 provider relating to the exhaustion of contractual or administrative
25 remedies, where applicable, or to revise or expand the scope of
26 practice of a provider or to revise or expand the types of providers
27 who are authorized to submit claims to, and contract with, a health
28 care service plan.

29 ~~(f) An aggrieved~~

30 (i) A provider may maintain a cause of action pursuant to this
31 section only if the ~~aggrieved~~ provider has ~~exhausted internal~~
32 ~~contractual remedies, where applicable, and exhausted remedies~~
33 ~~set forth in his or her contract with the plan or contracting entity~~
34 ~~that are administered and conducted by the plan or entity itself and~~
35 ~~that are available, and the provider has pursued its his or her rights~~
36 ~~pursuant to Section 1367 and regulations implementing that~~
37 ~~section, where applicable.~~

38 (j) *The remedies provided in this section shall be in addition to,*
39 *and not in derogation of, all other rights and remedies that a*
40 *provider may have under any other law.*

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2	CORRECTIONS
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